H-I-C—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A. 531/2002 सन् 200

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

APPELLANT (In jail custody) — Dujram, son of Nandu Sahu, aged about 35 years, resident of village Siltara, P.S. Takhatpur, Distt. Bilaspur, at present Raliya, Chowki Hardibazar, P.S. Kusmunda, Distt. Korba (CG).

-Versus-

RESPONDENT — State of Chhattisgarh, Through P.S. Chowki, Hardibazar, Distt. Korba (CG).

(Criminal Appeal under Section 374(2) of the Cr.P.C.)

Division Bench :

Hon'ble Shri L.C. Bhadoo &
Hon'ble Shri Sunil Kumar Sinha, JJ

10-8-2007

Shri V.P. Gupta, counsel for the appellant.

Shri Sudhir Bajpai, Dy. Govt. Advocate for the State.

Heard.

Oral judgment dictated on *dias*.

L.C. Bhadoo, J

The accused/appellant has preferred this appeal against the judgment of conviction and order of sentence dated 11-4-2002 passed by the Special Judge (Atrocities), Bilaspur, in Special Sessions Trial No.71/2000 whereby he has been held guilty under Section 302 of the Indian Penal Code for committing murder of Govind Singh and sentenced him to undergo imprisonment for life and to pay a fine of Rs.500/-, in default of payment of fine to further undergo S.I. for one month.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

2) The case of the prosecution, in brief, is that Jamuna & Triveni are real sisters. They are daughters of Laxmin Bai. Deceased namely, Govind Singh was the husband of Jamuna Bai. Accused-Dujram is the husband of Triveni. The deceased along with his wife Jamuna was residing at NTPC, Korba whereas Triveni along with her husband (accused) was residing at Saraisingar. Triveni after deserting her first husband married with the accused. On 15-7-2000 Jamuna along with her husband Govind Singh (since deceased) came to meet her mother Laxmin Bai to Saraisingar. On the fateful day, quarrel/ altercation took place between Dujram and Jamuna Bai regarding the partition. Hearing their voice, Govind Singh came out of the house. On seeing Govind Singh, accused attacked him with yoke (wooden part / a pair of draft animals fastened together), as a result of which Govind Singh fell down and became unconscious. He was taken to the NTPC hospital, Korba, from where he was taken to Sector-9 hospital, Bhilai. On 28-7-2000, he died in the hospital. Merg intimation was sent and First Information Report (Ex.P/7) for the commission of offence under Sections 307 & 325 of the Indian Penal Code was lodged. The injuries of Govind Singh were examined by Dr. A.N. Kanwar (PW-8) in Primary Health Centre, Hardi Bazar. He found that there was a lacerated wound in the size of 2 cm. x ½ cm. bone deep. He was referred to Korba hospital. Bed-head ticket of Govind Singh was seized under Ex.P/8. While in police custody, accused gave memorandum (Ex.P/9). Pursuant to that weapon of offence (yoke) was seized under Ex.P/3. Postmortem on the body of deceased Govind Singh was conducted by PW-14 Dr. J.P. Meshram, District Hospital, Durg. Postmortem report is Ex.P/18. Doctor opined that the cause of death was

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

coma as a result of head injury. After giving notice (Ex.P/20), inquest (Ex.P/21) was prepared on the body of Govind Singh.

3) After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Kathghora, who in turn committed the case to the Court of Sessions Judge, Bilaspur, from where learned Special Judge (Atrocities), Bilaspur, received the same on transfer for trial.

4) In order to establish the charge against the accused/appellant, the prosecution examined 16 witnesses. Statement of the accused was recorded under Section 313 of the Code of Criminal Procedure in which he denied the material appearing against him in the prosecution evidence. He stated that he is innocent and has been falsely implicated in the crime.

5) Learned Special Judge (Atrocities) after hearing counsel for the respective parties, convicted and sentenced the accused/appellant as aforementioned.

6) We have heard learned counsel for both the parties.

7) Learned counsel for the appellant has not disputed the homicidal death of Govind Singh. Moreover, from the ocular evidence of PW-1 Jamuna Bai, who witnessed the incident and saw the accused attacking the deceased as also the medical evidence of PW-14 Dr. J.P. Meshram, who conducted the postmortem on the body of the deceased, stated that the cause of death was coma as a result of head injury. Death was homicidal in nature. Therefore, it is established that the death of Govind Singh was homicidal in nature.

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -५-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

8) As far as involvement of the accused in the crime in question is concerned, PW-1 Jamuna, wife of the deceased & sister-in-law of the accused, has stated that on the fateful day she along with her husband Govind Singh (deceased) came to meet her mother Laxmin Bai to village Saraisingar. The accused and his wife were already residing with Laxmin Bai. When the accused saw Jamuna Bai he started talking with her that whether she has come to seek partition in the property, on which the deceased Govind Singh, who was sleeping inside the house, came out. Accused attacked him with yoke on his head, as a result of which he fell down. From there he was immediately taken to the NTPC hospital and thereafter he was shifted to Sector-9 hospital, Bhilai.

9) The above evidence of Jamuna Bai (PW-1) is corroborated by the evidence of PW-2 Laxmin Bai, mother of Jamuna & Triveni. This witness (Laxmin Bai) has stated that on the fateful day Govind Singh & Jamuna came to her house to meet her. She saw that Govind Singh was lying in injured condition and blood was oozing out. She has also stated that the accused was standing there. To that extent the presence of the accused and injuries sustained by Govind Singh has been proved by this witness. Defence has not been able to elicit any circumstances in cross-examination of PW-1 Jamuna to discredit her evidence. All are closely related. There is no reason to implicate the accused in a false case that too in a murder of his co-brother.

10) Evidence of PW-1 Jamuna further corroborated by the medical evidence of PW-8 Dr. A.N. Kanwar & PW-14 Dr. J.P. Meshram. They have also stated that there was a lacerated wound on the forehead of the deceased. Therefore, the involvement of the accused in the crime in question is established.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

11) Shri Gupta, learned counsel for the appellant, argued that there was no animosity between the accused and the deceased. On the fateful day, the deceased along with his wife Jamuna (PW-1) went to the house of PW-2 Laxmin Bai, mother of Jamuna, where the accused and his wife are already residing. There were some talks between Jamuna and the accused regarding the partition of the property. Hearing the talks of Jamuna and the accused, the deceased who was in drunken condition came on the spot. Accused all of a sudden in the heat of passion without any premeditation attacked the deceased with yoke, which was lying on the spot. There was no intention to the accused to cause death of Govind Singh. Therefore, the offence against the accused does not travel beyond Section 304 Part II of the Indian Penal Code.

12) On the other hand, Shri Bajpai, learned counsel for the State, supported the judgment of trial Court.

13) In order to appreciate the arguments advanced by learned counsel of the appellant, we have perused the record. It is admitted position that the deceased was the co-brother of the accused. On the fateful day, deceased Govind Singh along with his wife Jamuna came to meet the mother of Jamuna. When accused came, there were some talks between Jamuna and the accused took place. In the meantime, deceased appeared on the scene and accused attacked him with yoke, which was lying on the spot. As per the evidence of Dr. A.N. Kanwar (PW-8), there was a smell of liquor in the mouth of the deceased Govind Singh. There was no animosity between the deceased and the accused. From the evidence on record, it cannot be said that the accused attacked the deceased with an intention to cause his death. However, it can

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —6—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

safely be inferred from the evidence, the manner in which the accused attacked the deceased on his head with yoke, knowledge can be attributed to the accused that he was having knowledge that by attacking with yoke he may likely to cause death of the deceased. On the given facts and evidence, the offence under Section 304 Part-II of the IPC was made out against the accused.

14) In the result, the appeal partly succeeds. Conviction and sentence imposed upon the accused/appellant under Section 302 of the IPC are set aside, instead thereof he is convicted under Section 304 Part-II of the IPC and sentenced to undergo R.I. for 7 years. As per the judgment of the trial Court, it appears that the accused is in detention since 2-8-2000, thereby he has completed seven years sentence, he be set at liberty forthwith unless required to be detained in any other case.

Sd/-
L.C.BHADOO
Judge

Sd/-
Sunil Kumar Sinha
Judge

Gowri